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W. HELFRICH and JEANNETTE
N. HELFRICH

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RICHARD W. HELFRICH and JEANNETTE
N. HELFRICH,

Plaintiffs,

vs.

BANC ONE LEASING CORP., ASSET
MANAGEMENT SERVICES, DAVID J.
FULLER, and DOES ONE through
TWENTY, inclusive,

Defendants.

No. C06-0794 EMC

PLAINTIFFS RICHARD W.
HELFRICH AND JEANNETTE N.
HELFRICH'S THIRD AMENDED
COMPLAINT

COME NOW the Plaintiffs, Richard W. Helfrich and Jeannette N. Helfrich, and
allege the following causes of action under state law:

GENERAL ALLEGATIONS

1. Plaintiff Richard W. Helfrich ("Helfrich") is an individual, with his principal
place of residence in Alameda County, California. Plaintiff Jeannette N. Helfrich
is an individual, with her principal place of residence in Alameda County,
California. The plaintiffs are husband and wife.

2. Defendant Chase Equipment Leasing, Inc., as successor-in-interest to
Banc One Leasing Corporation (Banc One), is an Ohio corporation registered and
authorized to do business in the State of California by the California Secretary of

1 State.

2 3. Defendant Asset Management Services LLC ("AMS LLC") is a Florida
3 limited liability corporation. AMS LLC does business in the State of California
4 and, among other things, attempts to collect judgments rendered by the courts
5 of the State of California from judgment debtors in the State of California.

6 4. Defendant Alan Woodard ("Woodard") is an individual and is a resident of
7 the City of Gulf Breeze, Florida. Woodward is, and at all times herein mentioned
8 was, the sole owner of AMS LLC.

9 5. There exists, and at all times herein mentioned there existed, a unity of
10 interest and ownership between Woodard and AMS LLC, such that any
11 individuality and separateness between Woodard and AMS LLC have ceased,
12 and AMS LLC is the alter ego of Woodard in that AMS LLC is, and at all times
13 herein mentioned was, a mere shell, instrumentality, and conduit through which
14 Woodard carried on his business in the corporate name exactly as he had
15 conducted it previous to formation, exercising complete control and dominance
16 of such business to such an extent that any individuality or separateness of
17 AMS LLC and Woodard does not, and at all times herein mentioned did not,
18 exist.

19 6. Defendant David J. Fuller ("Fuller") is an individual. The plaintiffs are
20 informed and believe and on such information and belief allege that Fuller is a
21 resident of Los Angeles County California, that he is a licensed California
22 attorney, and that he maintains his law office in the City of Newhall, Los
23 Angeles County, California.

24 7. The plaintiffs do not know the true names and capacities of the
25 defendants sued as Doe One through Doe Twenty, inclusive. The plaintiffs will
26 seek leave to amend to insert their true names and capacities when they are
27 known to the plaintiffs.

28 8. The plaintiffs are informed and believe and on such information and belief

1 allege that each of the defendants herein, including the fictitiously named
 2 defendants, was the agent, employee, partner, or joint venturer of each of the
 3 other defendants, and in performing each of the acts alleged herein, each was
 4 acting within the course and scope of said relationships with the knowledge,
 5 consent or acquiescence of the other defendants. Specifically, but without
 6 limitation, AMS LLC was Banc One's agent at all times relevant to this
 7 complaint and in doing the things alleged below; and Fuller was the agent of
 8 AMS LLC and Banc One at all times relevant to this complaint and in doing the
 9 things alleged below.

10 9. In the mid-1990's Banc One obtained the Lease Judgment.

11 10. Richard W. Helfrich, plaintiff in this action, is not the Richard Helfrich who
 12 is the judgment debtor of the Lease Judgment.

13 11. AMS LLC undertook collection efforts on behalf of Banc One. Banc One
 14 assigned the Lease Judgment to AMS LLC for collection purposes, and retained
 15 some right, title or interest in the Lease Judgment or money collected in
 16 satisfaction of the Lease Judgment.

17 12. In late 2002, Woodard and AMS LLC incorrectly identified plaintiff
 18 Helfrich as the individual who was the subject of the Lease Judgment and
 19 undertook collection efforts against plaintiffs, including the retention of Fuller.

20 13. On or about March 27, 2003, Fuller renewed the Lease Judgment on
 21 behalf of AMS LLC and Banc One. On or about April 10, 2003, Fuller obtained
 22 a writ of execution.

23 14. Subsequent to obtaining the writ of execution, Fuller directed Same Day
 24 Attorney Service, a registered process server, to levy on "ANY AND ALL
 25 FUNDS IN THE POSSESSION, CUSTODY OR CONTROL OF SALOMAM, [sic]
 26 SMITH BARNEY, 6160 STONERIDGE MALL RD., #150, PLEANTON, [sic] CA
 27 94588, HELD IN THE NAME OF THE JUDGMENT DEBTOR, INCL. PROP. OF
 28 JEANETTE HELFRICH, SPOUSE OF JUDGMENT DEBTOR, INCLUDING BUT NOT

1 LIMITED TO DEPOSIT ACCOUNTS AND SECURITY INSTRUMENTS.” Same Day
 2 Attorney Service thereafter served the writ on SmithBarney Citigroup
 3 ("SmithBarney") in which plaintiffs held accounts, and served it on the plaintiffs
 4 by mail.

5 15. On or about May 16, 2003, pursuant to the writ of execution
 6 SmithBarney disbursed \$73,034.13 from an account owned by plaintiffs to the
 7 Alameda County Sheriff.

8 16. As a consequence of Fuller’s actions on behalf of AMS LLC and Banc
 9 One, the plaintiffs were forced to retain counsel and prosecute a Code of Civil
 10 Procedure section 720.110 Third Party Claim action in an effort to recover the
 11 funds.

12 17. In addition, from April 29, 2003 through the initial hearing on the Third
 13 Party Claim on July 17, 2003, Fuller engaged in a pattern of conduct that was
 14 intended to and did delay and confound the efforts of plaintiffs and their counsel
 15 to obtain release of the funds that Fuller had wrongfully had seized from the
 16 plaintiffs’ account. Among other things Fuller:

- 17 a. Failed and refused to cause the return of the funds after repeated
 18 requests;
- 19 b. Failed and refused to respond, or responded in an untimely fashion
 20 to communications and correspondence;
- 21 c. Refused to honor numerous requests for any evidence or basis for
 22 his contention that plaintiff Helfrich was the judgment debtor in the
 23 Lease Judgment;
- 24 d. Failed and refused to honor requests from plaintiffs’ counsel for
 25 any information regarding the nature, substance or status of the
 26 underlying Lease Judgment;
- 27 e. Filed an ex parte motion for an injunction against the Sheriff of
 28 Alameda County from releasing the funds in response to the Third

1 Party Claim; and

2 f. Sought extensive delays of the hearing on the Third Party Claim.

3 18. Fuller engaged in this pattern of conduct without evidentiary support for
4 the position that the assets of plaintiffs were subject to the Lease Judgment.

5 19. The defendants' conduct was intended to coerce the plaintiffs into paying
6 or settling the Lease Judgment debt for which the plaintiffs had no
7 responsibility. The defendants' conduct was intended to accomplish this by
8 causing both financial losses and emotional distress to the plaintiffs, or was
9 done negligently and with reckless disregard for the financial losses and
10 emotional distress it would cause the plaintiffs, and was done without
11 justification or legitimate purpose, with the sole objective of compelling the
12 plaintiffs to pay money to the defendants and their principals that the plaintiffs
13 did not and do not owe.

14 20. The defendants ultimately abandoned the levy and stipulated to release of
15 the funds, but not until plaintiffs had been deprived of use of their funds for
16 more than three months and thereby incurred losses on sale of assets, lost
17 opportunities for investment, incurred substantial attorneys' fees, and suffered
18 severe emotional distress.

19 **JURISDICTION AND INTRA DISTRICT ASSIGNMENT**

20 21. The defendants removed this action to federal court, pursuant to 28
21 U.S.C. 1441(b), on February 6, 2006.

22 **FIRST CAUSE OF ACTION - ABUSE OF PROCESS**

23 22. The plaintiffs incorporate by this reference all of the allegations of
24 paragraphs 1 through 20, inclusive, as if fully set forth here.

25 23. The defendants' attachment and levy on the plaintiffs' account was for
26 an improper purpose and not the purpose that the process was intended to
27 achieve, in that the defendants sought to compel payment or settlement of the
28 Lease Judgment from persons who were not the judgment debtor.

24. The defendants' conduct caused the plaintiffs to have to liquidate assets at a loss in order to replace the funds needed for investment and to pay their living expenses.

25. The defendants' conduct caused the plaintiffs to incur substantial attorneys' fees to oppose and defeat the levy in an effort to recover the funds that defendants had caused to be seized from plaintiffs' account.

26. As a consequence, the plaintiffs have suffered damages in an amount to be proven at trial, and which is in excess of \$25,000.00.

27. The defendants' conduct was outrageous and was done intentionally and with malice and oppression.

SECOND CAUSE OF ACTION - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

28. The plaintiffs incorporate by this reference all of the allegations of paragraphs 1 through 20, and 23 through 27, inclusive, as if fully set forth here.

29. The defendants' conduct was intended to cause emotional distress to the plaintiffs, or was done with reckless disregard of the probability that the plaintiffs would suffer emotional distress.

30. The plaintiffs both suffered severe emotional distress as a direct result of the defendants' conduct.

31. The defendants' conduct was outrageous and was done intentionally and with malice and oppression.

THIRD CAUSE OF ACTION - NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

32. The plaintiffs incorporate by this reference all of the allegations of paragraphs 1 through 20, and 23 through 27, inclusive, as if fully set forth here.

33. The defendants were negligent in their identification of the persons and assets against which they attempted to collect the Lease Judgment.

34. As a result of the defendant's negligence, the plaintiffs suffered serious

1 emotional distress.

2 **FOURTH CAUSE OF ACTION - MALICIOUS PROSECUTION**

3 35. The plaintiffs incorporate by this reference all of the allegations of
4 paragraphs 1 through 34, inclusive, as if fully set forth here.

5 36. Defendants' initiated and failed to withdraw legal proceedings maliciously
6 and without probable cause against plaintiffs.

7 37. The defendants' attachment and levy on the plaintiffs' account was for
8 an improper and malicious purpose and not the purpose that the legal
9 proceeding was intended to achieve, in that the defendants sought to compel
10 payment or settlement of the Lease Judgment from persons the knew or should
11 have known who were not the judgment debtor.

12 38. The defendants' knew that the real judgment debtor had a different social
13 security number, different date of birth, different spouse, different residence,
14 different employment and different credit listing than the plaintiff.

15 39. The defendants' conduct caused \$73,034.13 from an account owned by
16 plaintiffs to be withdrawn and disbursed to the Alameda County Sheriff.

17 40. Plaintiffs did not receive back their wrongfully attached monies until
18 defendants release the attachment an order entered on July 23, 2003 to release
19 the attachment.

20 41. The defendants' conduct was outrageous and was done intentionally and
21 with malice and oppression and thus, they are hereby entitled to punitive
22 damages.

23 42. The defendants' conduct caused the plaintiffs to incur substantial
24 attorneys' fees to oppose and defeat the levy in an effort to recover the funds
25 that defendants had caused to be seized from plaintiffs' account.

26 43. The legal proceedings against plaintiffs were terminated in plaintiffs'
27 favor.

28 44. As a consequence of defendants' actions, the plaintiffs have suffered

1 damages in an amount to be proven at trial, and which is in excess of
2 \$25,000.00.

3 45. As a consequence of defendants' actions, the plaintiffs suffered serious
4 emotional distress.

5 **FIFTH CAUSE OF ACTION - INVASION OF PRIVACY**

6 46. The plaintiffs incorporate by this reference all of the allegations of
7 paragraphs 1 through 45, inclusive, as if fully set forth here.

8 47. Defendants', through the actions of Woodard, who herein acted on behalf
9 of Banc One, AMS LLC, and Fuller, knowingly obtaining private and personal
10 information about plaintiffs by fraudulently, deceptively, unconscionably,
11 unfairly, and maliciously pretending to be a company called the "Dial Group" in
12 order to send a consumer survey and a \$10.00 check to plaintiffs to collect
13 plaintiffs' private information.

14 48. Woodard intruded into the privacy of plaintiffs by pretending to be a
15 company called the "Dial Group," which Woodard misrepresented to be
16 collecting information for national companies through a consumer survey which
17 requested private and personal consumer oriented information.

18 49. Woodard pretended to be the "Dial Group" and offered plaintiffs a check
19 along with the consumer survey for \$10.00 from the "Dial Group" to induce
20 plaintiffs into participating in their consumer survey.

21 50. Woodard's manner of intrusion was highly offensive because it deceived
22 plaintiffs into believing that they were entering into a consumer relationship with
23 the "Dial Group", thus causing plaintiffs to reveal personal and private
24 information, when, in fact, they were revealing private information to Woodard
25 and Defendants for the purposes of having a debt collected against them.

26 51. As a consequence, plaintiffs cashed the check for \$10.00 and revealed
27 their bank account information and filled out the consumer survey revealing that
28 their "favorite place to bank" was Smith Barney.

1 52. Woodard released this information to Defendants without plaintiffs
2 knowledge for the purposes of collecting a debt from plaintiffs and shortly
3 thereafter, Defendants effected a writ of execution against plaintiffs' Smith
4 Barney account.

5 53. As a consequence of defendants' actions, the plaintiffs have suffered
6 damages in an amount to be proven at trial, and which is in excess of
7 \$25,000.00.

8 54. As a consequence of Defendants' actions, the plaintiffs suffered serious
9 emotional distress.

10 **SIXTH CAUSE OF ACTION - FRAUD**

11 55. The plaintiffs incorporate by this reference all of the allegations of
12 paragraphs 1 through 54, inclusive, as if fully set forth here.

13 56. Defendants', through the actions of Woodard, who herein acted on behalf
14 of Banc One, AMS LLC, and Fuller, knowingly obtaining private and personal
15 information about plaintiffs by fraudulently, deceptively, unconscionably,
16 unfairly, and maliciously pretending to be a company called the "Dial Group" in
17 order to send a consumer survey and a \$10.00 check to plaintiffs to collect
18 plaintiffs' private information.

19 57. Woodard pretended to be a company called the "Dial Group," which
20 Woodard misrepresented to be collecting information for national companies
21 through a consumer survey which requested private and personal consumer
22 oriented information.

23 58. Woodard pretended to be the "Dial Group" and offered plaintiffs a check
24 along with the consumer survey for \$10.00 from the "Dial Group" to induce
25 plaintiffs into participating in their consumer survey.

26 59. Woodard's true intention was that plaintiffs rely upon his
27 misrepresentations and deceptions and enter into a relationship with the "Dial
28 Group" by depositing the \$10.00 check and answering a consumer survey in

1 which they revealed private and personal information about themselves to the
 2 "Dial Group".

3 60. Woodard's true intention was to collect plaintiffs' personal and private
 4 banking information for the purposes of using the information to collect a debt
 5 against plaintiffs.

6 61. Plaintiffs justifiably relied upon the misrepresentations and deceptions of
 7 Woodard through the "Dial Group" and cashed the check for \$10.00, thus
 8 revealing their bank account information and filled out the consumer survey,
 9 thus revealing that their "favorite place to bank" was Smith Barney.

10 62. Woodard released this information to Defendants without plaintiffs
 11 knowledge for the purposes of collecting a debt from plaintiffs and shortly
 12 thereafter, Defendants effected a writ of execution against plaintiffs' Smith
 13 Barney account.

14 63. As a consequence of defendants' actions, the plaintiffs have suffered
 15 damages in an amount to be proven at trial, and which is in excess of
 16 \$25,000.00.

17 64. As a consequence of defendants' actions, the plaintiffs suffered serious
 18 emotional distress.

19 **SEVENTH CAUSE OF ACTION - DECEPTIVE PRACTICES**

20 **(Civil Code §§ 1788 et seq.)**

21 65. The plaintiffs incorporate by this reference all of the allegations of
 22 paragraphs 1 through 64, inclusive, as if fully set forth here.

23 66. Plaintiffs were not in a commercial or business relationship with
 24 Defendants, however, Defendants, by misrepresenting themselves to be the
 25 "Dial Group", induced Plaintiffs to enter into a consumer relationship with it
 26 when it offered a check for \$10.00 to Plaintiffs. which Plaintiffs cashed, in
 27 return for filling out a consumer survey in which they revealed information about
 28 their private and personal practices as consumers.

1 67. Defendants', through the actions of Woodard, who herein acted on behalf
2 of Banc One, AMS LLC, and Fuller, knowingly invaded the privacy of plaintiffs
3 and obtained private and personal information about plaintiffs by fraudulently,
4 deceptively, unconscionably, unfairly, and maliciously pretending to be a
5 company called the "Dial Group" in order to send a consumer survey and a
6 \$10.00 check to plaintiffs to collect plaintiffs' private information.

7 68. Woodard failed to disclose his identity at first contact with plaintiffs and,
8 instead, identified himself as a company called the "Dial Group" which Woodard
9 misrepresented to be conducting a consumer survey for national companies.

10 69. Woodard failed to send written verification and notice within 5 days of
11 his initial contact with Plaintiffs.

12 70. Woodard pretended to be the "Dial Group" and offered plaintiffs a check
13 along with the consumer survey for \$10.00 from the "Dial Group" to induce
14 plaintiffs into participating in their consumer survey.

15 71. Woodard's true intention was that plaintiffs rely upon his
16 misrepresentations and deceptions and enter into a relationship with the "Dial
17 Group" by depositing the \$10.00 check and answering a consumer survey in
18 which they revealed private and personal information about themselves to the
19 "Dial Group".

20 72. Woodard's true intention was to collect plaintiffs' personal and private
21 banking information for the purposes of using the information to collect a debt
22 against plaintiffs.

23 73. Plaintiffs justifiably relied upon the misrepresentations and deceptions of
24 Woodard through the "Dial Group" and cashed the check for \$10.00, thus
25 revealing their bank account information and filled out the consumer survey,
26 thus revealing that their "favorite place to bank" was Smith Barney.

27 74. Woodard released this information to Defendants without plaintiffs
28 knowledge for the purposes of collecting a debt from plaintiffs and shortly

thereafter, Defendants effected a writ of execution against plaintiffs' Smith Barney account.

75. As a consequence of defendants' actions, the plaintiffs have suffered damages in an amount to be proven at trial, and which is in excess of \$25,000.00.

76. As a consequence of defendants' actions, plaintiffs incurred attorneys' fees and pursuant to Civil Code §1788.30, plaintiffs are entitled to attorneys' fees and costs and interests for defendants' actions in violation of C.C. §§ 1788 et seq.

77. As a consequence of defendants' actions, the plaintiffs suffered serious emotional distress.

PRAYER FOR RELIEF

WHEREFORE the plaintiffs pray judgment:

1. For damages in an amount to be proven at trial, and which in excess of \$25,000.00, in compensation for their direct financial losses, attorneys' fees incurred in obtaining release of their funds, and lost concrete and non-speculative investment opportunities as will be established at the trial of this matter;

2. For general damages for the emotional distress caused by the defendants' conduct;

3. For punitive damages in an amount sufficient to punish the defendants and deter them from future conduct of the kind that has harmed the plaintiffs;

4. For interest at the legal rate from the date of filing of this complaint;

5. For attorneys' fees; and

6. For such other relief as this court deems just and proper.

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Date: February 14, 2006

LAW OFFICES OF PETER M. STANWYCK

/S/

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